IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 5053 1997.

Vishwanath Govind Lagu, aged 64 years,]
Occupation: Retired, residing at]
Brahman Ali, Papadi, Taluka Vasai,] .. Petitioner
District : Thane.] (Ori.Defdt.)

Versus

Smt. Usha Laxman Barve,]
aged 75 years, Occupation Household,]
residing at Barve Wada, Papadi,] .. Respondent
Taluka-Vasai, District : Thane.] (Ori.Pltff.)

Mr. V.S. Paradkar with Ms. S.G. Paradkar i/b S.J. Paradkar for the petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 11TH AUGUST, 2005

ORAL JUDGMENT. :

1. The Petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the judgment and order dated 23rd July 1997, passed by the Additional District Judge, Palghar (for short "Appellate Court"), whereby, the judgment and decree of the Trial Court in Regular Civil Suit No. 113 of 1987 dated 6th July, 1993, was set aside and the respondent-landlord’s

suit for possession on the ground of securing alternative accommodation by the tenant as contemplated under Section 13(1)(l) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 (for short "The Bombay Rent Act") has been allowed. Therefore, the present Writ Petition.

2. Since 1963, the petitioner-tenant is in occupation of one room admeasuring 7’ X 10’. As it was difficult for the petitioner to accommodate all five of his family members, he acquired another premises of two rooms specially for the education and residence of his son and daughter near the suit premises, on rent. The respondent-landlady had full knowledge of the same. After more than 12 years i.e. on 19th January, 1987, a notice on that foundation was issued and the landlady demanded the possession. On 21st March, 1987, a Regular Civil Suit No.113 of 1987 was filed for possession on the ground of acquisition of suitable accommodation. The same was resisted by a Written Statement dated 15th March, 1988. Evidence was led by the parties. There remained no dispute on the basis of evidence itself that no action was initiated by the respondent-landlady at any time, including any objection for the acquisition of such premises. The Trial Court, therefore, after considering the material and the evidence on the record,

dismissed the Suit. In the Appeal preferred by the respondent-plaintiff, the Appellate Court, however, accepted the respondent's case and reversed the Trial Court's order and granted the decree for possession on that ground.

3. Heard Mr. Paradkar, counsel for the petitioner. None appeared for the respondent. At the request of the respondent-landlady aged 80 years, the matter was placed on the Board for final hearing. It was adjourned on 25th July, 2005 and also on 8th August, 2005. None appeared for the respondent.

4. Section 13(1)(l) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 (for short "The Bombay Rent Act"), as relevant for the purpose of the present Writ Petition, is reproduced as under:

> "13(1)(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence."

5. In the present case, there is no dispute that the petitioner-tenant has acquired the possession of two rooms and he has been in possession of the same since 1974. The submission is that the said acquisition of

the additional premises has been for the growing family of the petitioner and, therefore, such additional accommodation by the tenant, in the facts and circumstances of the case, cannot be said to be a ground as contemplated under the Bombay Rent Act. The basic submission appears to be that even if there is an acquisition of the premises by the present petitioner, that cannot be said to be "suitable" as contemplated under the Bombay Rent Act. The word "suitable" is not defined under the Bombay Rent Act. In absence of such positive definition, it is necessary to consider the Scheme of the Bombay Rent Act so far as the ground of acquisition of vacant possession of suitable residence by the tenant.

6. The first and important burden in the present case, so far as the landlady is concerned, remained undisputed in view of the admitted position that the tenant has acquired two room premises. The second important aspect is for the tenant to prove that the said premises is not suitable for the residence purpose as contemplated under the Act. The counsel appearing for the petitioner has relied on **Prabhakar Raghunath Dixit Vs. B.S. Kothare** Bom. Law Reporter, Vol.LXXVI, Pg.240 wherein Bombay High Court, after considering the said definition, read with the same provisions observed

as under:

> "The two Courts below have not borne in mind the correct principles regarding the interpretation of the word "suitable" under s. 13(1)(l). They have not at all taken into consideration the needs of the school and college going children of the tenant and the possibility of overcrowding to avoid which the tenant has tried to acquire additional premises. As the children grow, the needs of the tenant and his family members become more oppressive. Needs are not fixed and static. They move forward in time. The two Courts below have completely ignored this aspect of the matter."

The Bombay High Court, earlier to this in **Krishnaji Vs. Dr. Shankar Abhyankar** (1965) 67, Bom.L.R., 690 observed as under:

> "Suitability cannot be only for one purpose. It must be suitability for his reasonable needs. In order, therefore, to decide suitability of the residence for the tenant, the Court has to consider the needs of the tenant and his family and consider whether or not the other accommodation that has been acquired by the tenant is suitable for his needs."

Another judgment of the Gujarat High Court, but interpreting the same provision has been relied viz. **Soni Jagjivan Narsi Vs. Manchhaben Odhavji** 1975, Gujarat Law Reporter, Vol.XVI, Pg.991. The Gujarat High Court again interpreted the said provision as under:

> "Therefore, the real test, in my opinion is, when a tenant has one set of rented premises and when he takes a second set of premises on rent, whether the old premises from which he has shifted to his new premises continue to be occupied by his dependants. If the person who continue to occupy the old premises are his dependants, it cannot be said that he has acquired vacant possession of a suitable residence because his eviction from his old premises will again drive his dependants from that place to his new premises and will create difficulty of accommodating them. If the evidence shows that the new premises which a tenant has taken on rent are sufficient to accommodate himself and all his dependants, then certainly he can be evicted under sec. 13(1) of the Rent Act from his old premises. If the new premises are not sufficient for accommodating his large family and if he himself resides in his new premises and if his dependants continue to occupy or reside in his old premises, I do not think he can be evicted under sec. 13(1)(l) of the Bombay Rent Act from his old premises because his new premises have been left by the defendant to his brothers.

In **J. Marathe Vs. P.V. Kaloke** 2004 (6) Bom.C.R. 721, a Division bench of the Bombay High Court held as under:

> "It is necessary to bear in mind that the Legislature in enacting section 13(1)(l) of the Act did not say that as soon as the tenant gets some residence equal or larger in area than the former residence under the landlord, the tenant should be evicted. The emphasis of the Legislature is on the word "suitable". Therefore, in every case it will have to be seen, having regard to the facts and circumstances of

> the case, whether the tenant can be said to have acquired or allotted suitable alternative accommodation."

7. In absence of any definition of the word "suitable residence", the meaning has to be gathered from the intention, purpose and object of the Act and as enunciated above, read with facts and circumstances of the case. Therefore, if a tenant makes out a case that even though the premises has been acquired it is in no way suitable to accommodate the whole family and on the contrary, the additional acquisition of the premises is only for accommodating some of the members of his family as the present accommodation itself was insufficient and in such cases, unless it is proved and the sufficient material is brought on the record by the landlord to suggest that (a) the tenant is not making his case on a clear background and/or the case as sought to be placed by the tenant is not bonafide (b) that the whole purpose of the tenant is to earn profit and/or acquire the premises, but not to vacate the premises of the landlord. The case of the landlord may not be accepted in each and every case. The conduct of the parties is also relevant aspect to be considered in such cases, (d) If the tenant is able to demonstrate and prove the shortage of accommodation of his large family, and (e) further proves that admitted acquisition of the premises

is only to accommodate some of the members of his large family, in such cases, it is difficult to accept the case of the landlord to say that the tenant has acquired "suitable residence" as contemplated under the Bombay Rent Act.

8. In the present case admittedly the tenant has acquired the two rooms for accommodating his son and daughter at the relevant time i.e. in the year 1974. The growing need of the tenant's family also cannot be overlooked. In the present case, it is not the case of the landlord's bonafide need. As the evidence shows and as rightly observed by the Trial Court, the tenant has proved his case that the acquisition of the premises was not suitable for his residence. In the present case, the tenant has been occupying and using the premises in question. The newly acquired premises is in possession of the son and daughter of the petitioner-tenant.

9. The facet of delay in filing the present suit by the landlady, in the facts and circumstances of the case, is also relevant. There is an ample material on the record, even in the evidence of the parties, that the respondent-landlady had full knowledge about the acquisition of additional accommodation/premises by the tenant. That was in the year 1974. There was no

objection of any kind raised by the respondent at any point of time, except for the notice dated 19th January, 1987. The learned counsel for the petitioner, therefore, also raised an issue that such suit filed by the landlord after more than 12 years, is beyond limitation. **Ganpat Ram Sharma and ors. Vs. Smt. Gayatri Devi** AIR 1987, S.C., 2016 has been relied on for the said purpose. The provisions of the Limitation Act, basically Articles 66 & 67 read with Article 119 had been resorted to. The Appellate Court, however, rejected the said issue and plea of the tenant. There was no such plea raised before the Trial Court. In the present case, without going into that controversy, at this stage, the following observation of the Apex Court is relevant - "The other aspect, apart from the question of limitation, to which we shall briefly refer, is that the landlord must be quick in taking his action after the accrual of the cause of action and if by his inaction the tenant allows the premises to go out of his hands then it is the landlord who is to be blamed and not the tenant." In the light of the aforesaid observation and in the facts and circumstances of the case, I am also of the view that in the present case, the delayed action of the landlord-respondent also takes away the supportive rigour of the Bombay Rent Act. There is no such limitation provided under the Act to

file such suit.

10. Anyway, without going into that controversy, the finding given by the Trial Court and as observed above, the Appellate Court was wrong in reversing the order passed by the Trial Court, There is no case made out as contemplated under Section 13(1)(l) of the Bombay Rent Act.

11. The learned counsel for the petitioner also relied in **Ramchandra Dattatraya Gandhi Vs. Pushpabai Manohar Sheth** 1990, Mh.L.J., 485 in support of his submission that in view of the Bombay Rent Act, if no action is taken by the landlord within the prescribed period, as contemplated under the Limitation Act, such suit itself is liable to be dismissed. In the case of **Ramchandra** (supra) Section 13(1)(b) of the Bombay Rent Act was dealt with and the Court observed that if permanent structure is made and remained unobjected and no action is taken, such inaction amounts to waiver of his right to file a suit under Section 13(1)(b). As we are not dealing with Section 13(1)(b) those observations are not necessary to be considered in the present matter.

12. In the aforesaid circumstances, the Writ

Petition is allowed. The judgment and order passed by the Appellate Court dated 27th March, 1987, is quashed and set aside. The order passed by the Trial Court is restored. The Suit is dismissed. Rule made absolute in the above terms. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]